

ORIGINAL

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December 19, 2002

Mr. Vernon A. Williams
Secretary
Surface Transp. Board
Washington DC 20423

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Re: Docket No. AB-448 (Sub-No. 2X)
SF&L Railway-Abandonment-Peoria/La Harpe, IL

Dear Mr. Williams:

This is in response to the Keokuk Junction Railway (KJRY) letter, dated December 17, seeking "immediate" clarification of certain matters in light of the forthcoming expiration of a 4-month period since the September 3, 2002 filing by SF&L of its petition for abandonment.

KJRY suggests the recent SF&L petition for judicial review for the October 17 order in F.D. Nos. 33995-96 (USCA-10th Cir., No. 02-9591), affects the Board's jurisdiction in F.D. Nos. 33995-96.

While expedition of all proceedings is helpful--and particularly for dismissal of the SF&L abandonment petition--protestant disagrees that court review of the October 17, 2002 order in F.D. Nos. 33995-96 affects the Board's jurisdiction in those proceedings. The SF&L petition to reopen in F.D. Nos. 33995-96, filed December 13, was not made within the 20-day "window period" provided by 49 CFR 1115.3, nor was a timely request made for an extension to do so. 1115.3(e). Accordingly, the December 13 petition comes within 49 CFR 1115.4, as one to reopen rather than for reconsideration. Thus, without question, there is concurrent jurisdiction between court and agency.

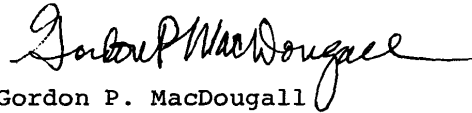
The apparent confusion concerning agency and court jurisdiction where agency reconsideration is pending, should not affect jurisdiction of agency or court where reopening is sought outside the "window period" for agency reconsideration. For example, see: ICC v. Locomotive Engineers, 482 U.S. 270, 277-84 (1987), United Transp. Union v. ICC, 871 F.2d 1114, 1116-18 (D.C. Cir. 1989), ICG Concerned Workers Ass'n v. U.S., 888 F.2d 1455 (D.C. Cir. 1989), Wade v. FCC, 986 F.2d 1433 (D.C. Cir. 1993). Cf. American Farm Line v. Black Ball, 397 U.S. 532, 540-42 (1970).

I would add that the term "petition to reopen" was employed by the former ICC to embrace petitions both inside and outside the "window period." The STB changed the term, so as to require that "window period" petitions be labeled "petition for reconsideration," with petitions outside the "window period" to be termed "petition to reopen." Cf. 49 CFR 1115.3-4 (1987 ed.); 49 CFR 1115.3-4 (2001 ed.). The opinion in ICC v. Locomotive Engineers, *supra*, should be read in the context of the rules as they stood at that time, where "petition to reopen" was used for both "window period" and "outside" petitions, although the opinion had in

mind the 20-day "window period." 482 U.S. 270 at 279 n.2.

I am authorized to state that counsel for City of Macomb and McDonough County concur in this letter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Gordon P. MacDougall".

Gordon P. MacDougall
Atty. for Joseph C. Szabo

cc: Linda A. O'Brien
William E. Poncin

All counsel